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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re MARTIN D.,

a Person Coming Under the Juvenile Court Law.

B202259
(Los Angeles County
Super. Ct. No. CK57530)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.V.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
D. Zeke Zeidler, Judge. Affirmed.

Sharon S. Rollo, under appointment by the Court of Appeal, for Defendant
and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant
County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for
Plaintiff and Respondent.

INTRODUCTION

C.V. (Mother) appeals from an order of the juvenile court terminating her parental rights to her son, Martin D. Mother contends that, given the nature of her relationship with Martin, the juvenile court erred in failing to find applicable the exception which would have avoided termination of her parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(A).)¹ Mother further contends that the court did not have before it evidence regarding Martin's wishes, which the court was required to consider. Finally, she contends that the court violated her rights to due process by limiting her counsel's time to present direct examination, and failing to allow Mother to present rebuttal evidence. We affirm the order terminating parental rights.

FACTUAL AND PROCEDURAL BACKGROUND

The following facts are repeated in part from our earlier opinion, in which we affirmed the order requiring that Mother's visits with Martin were to be monitored. (*In re Martin D.* (Feb. 21, 2008, B195024) [nonpub. opn.].)

Martin, born in May 2003, came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in December 2004 when DCFS received a referral from a hospital regarding Martin, indicating that he had suffered severe trauma to his abdomen. Martin's father, Martin, Sr. (Father),² later

¹ All undesignated section references are to the Welfare and Institutions Code. Effective January 1, 2008, section 366.26 was revised and subdivision (c)(1)(A) was renumbered as subdivision (c)(1)(B)(i). (Stats. 2007, ch. 565, § 4; Stats. 2007, ch. 583, § 28.5.) We will refer to the provision in effect at the time of the juvenile court's order, subdivision (c)(1)(A).

² Father is not a party to this appeal.

admitted to the police that he had injured the child. However, he continued to deny wrongdoing to the social worker.

DCFS filed a petition pursuant to Welfare and Institutions Code section 300 and detained Martin. Martin was eventually placed in the home of the maternal grandmother, Miriam V. The court granted Mother monitored visits.

The court sustained the section 300 petition on April 25, 2005, finding true that Martin suffered from a life-threatening condition as a result of Father's unreasonable acts. Father was denied reunification services pursuant to section 361.5, subdivision (b)(5). Mother was granted reunification services, and ordered to attend a 52-week parent education class and individual counseling to address case issues, including protection of the child, codependency, and her denial of the nature and cause of Martin's injuries. Mother was granted unmonitored visitation in Miriam's home, and monitored visitation outside of Miriam's home. In July 2005, the court permitted Mother to have twice weekly, unmonitored visits outside the maternal grandmother's home. The court further ordered that Mother could have overnight visitation in the caregiver's home, and in fact was permitted to live there.

At the six-month review hearing (§ 366.21, subd. (e)), held in August 2005, the court found that returning Martin to Mother's physical custody posed a risk of detriment to the child, but it was likely that Martin could be returned to Mother's physical custody within six months. She had not exercised her unmonitored visitation with Martin during the reporting period.

The twelve-month review hearing (§ 366.21, subd. (f)) was held in February 2006. DCFS reported that Mother had not enrolled in a 52-week parenting program, although such programs were available to her. Based on Mother's failure to comply with the case plan, DCFS recommended termination of reunification services. The court continued the matter for an evidentiary hearing.

At the hearing on March 28, 2006, the court terminated family reunification services for Mother, finding she had not made substantial progress in addressing the issues involved in the case. The court ordered that Mother could reside in the maternal grandmother's home, conditioned upon DCFS's confirmation that she was in complete compliance with the case plan. The matter was set for a selection and implementation hearing (§ 366.26), and DCFS was ordered to provide permanent placement services for Martin. A home study of the maternal grandmother's home had been initiated.

On September 27, 2006, DCFS filed a section 387 supplemental petition, indicating that the social worker detained Martin from the maternal grandmother's home on September 22, 2006. The section 387 petition alleged that the maternal grandmother had created a detrimental home environment by allowing the maternal uncle, Eric V., to reside in the home while he was on probation, and by allowing Mother to live there without DCFS approval. On September 22, 2006, while the adoptions social worker was at the maternal grandmother's home, four police units had arrived, looking for Eric.

Five days later, the juvenile court returned Martin to the maternal grandmother's care, conditioned on Eric and Mother not residing in her home. Mother's visits were ordered to be held in a neutral setting, not at maternal grandmother's house. On October 4, 2006, DCFS again removed Martin from the maternal grandmother's home when it became apparent that Eric was still living there. The court ordered Martin removed from his placement with the maternal grandmother, and placed in foster care. No changes were made in Mother's visitation orders. The matter was continued for adjudication of the section 387 petition.

DCFS reported that during an unmonitored visit with Martin on October 18, 2006, Mother took the child to a medical clinic because she believed he was being

physically abused by the foster caregiver. She did not inform the social worker or foster mother that she had done so. However, the physician informed the social worker, and said there was no indication of any abuse. The foster caregiver requested that Martin be removed because she did not want to have further contact with Mother, or to be subjected to continuing accusations of abuse.

The section 387 petition was adjudicated on November 13 and 14, 2006. The court sustained the petition, finding that Martin's placement with the maternal grandmother was no longer appropriate. The court ordered that Mother's visits were to be monitored by a DCFS-approved monitor, at least weekly. Mother appealed from that order. In a nonpublished opinion filed on February 21, 2008, we affirmed the order requiring monitored visitation. (*In re Martin D.* (B195024).)

Events Subsequent to the Prior Appeal

DCFS reported on January 31, 2007, that Martin was living in a foster home. His therapist reported that he appeared anxious during sessions, but responded well to play therapy. He expressed contentment regarding living in his foster home. The foster mother told the therapist that Martin had crying spells and outbursts at bedtime. At the hearing on that date, the court ordered DCFS to prepare a report addressing in detail Mother's visitation since August, and the willingness of the foster parent to adopt Martin.

In a report dated March 7, 2007, DCFS stated that Mother visited Martin weekly, and that visits were going well. Mother was attentive to his needs; she played with him and took him gifts. Martin had adjusted well to his placement, and was no longer crying uncontrollably when visits with Mother ended, as he had in the past. The foster mother told the social worker that Mother's attitude had changed, and she had become very attentive and appreciative toward the foster mother.

Martin reportedly had considerable difficulty with his speech and word pronunciation. Adults who knew him well could understand only 20 percent of his words, while strangers could not understand him at all. He was referred to a speech therapist.

An Interstate Compact for the Placement of Children (ICPC) had been initiated to investigate placing Martin with maternal relatives in North Carolina. That remained pending as of the hearing on March 7, 2007, at which the court indicated it would identify the most appropriate permanent plan for Martin on April 26, 2007.

Martin's foster mother wanted to adopt the child, and an adoptive home study was initiated for her in April 2007. She understood that the maternal relatives in North Carolina were also being investigated for Martin's placement, but she wished to continue with the adoption process. Martin continued to have weekly visits with Mother, for two hours at the foster family agency, and they were going well for the most part. At a visit on March 15, 2007, Martin clung to the foster mother's leg when he saw Mother and Father arrive. Martin usually ran to Mother when she arrived for visits. The caregiver noted that Mother had a new hairstyle and looked a bit awkward, and thought that might have caused Martin's anxiety. Mother had to convince Martin to let go of the foster mother's leg by talking to him and carrying him.

DCFS reported that the ICPC worker in North Carolina decided it would be better to do a relative home study instead of an adoptive home study because of the lack of services in North Carolina for Spanish speaking clients. Foster care licensing classes were only offered in English. The maternal uncle still wished to continue the adoption process despite the fact he was unlikely to receive financial assistance if Martin were placed with him under a relative home study. However, the uncle had been convicted of driving under the influence, and the North

Carolina ICPC worker said that state does not permit adoptions to take place when the prospective adoptive parent has such a conviction. Another potential placement, a maternal aunt in North Carolina, resided with a boyfriend who had a conviction for domestic violence.

Martin's therapist reported in April 2007 that he no longer appeared anxious during sessions. He had been able to talk to some extent about his feelings about being separated from his family. He seemed content with his living arrangements, and the foster mother had expressed that Martin and his foster siblings got along well. His crying spells and outbursts had decreased.

At the hearing on April 26, 2007, the court vacated the order for the ICPC investigations, given that both relatives in North Carolina had convictions that would preclude their being approved for adoption. The court also found that notice to Father had been inadequate. Mother stated she had no idea how to contact Father. Mother requested that two other maternal aunts be considered for placement of Martin, and the court so ordered.

DCFS recommended adoption by the foster mother as the permanent plan for Martin. The foster mother's adoptive home study was completed and approved in late August 2007. Martin, who had been placed with the foster mother for one year, said that he would like to remain in his foster mother's home, but was too young to make a meaningful statement regarding adoption. Martin had formed a strong emotional bond and attachment to his foster mother. His speech had improved and the social worker was able to understand him when he spoke.

DCFS had sent the maternal grandmother a certified letter in June 2007, requesting contact information for her two daughters, with whom Mother had requested Martin be placed, but the grandmother did not respond to the letter. DCFS sent letters to the two aunts at the maternal grandmother's address, but neither aunt had contacted DCFS.

DCFS further reported that Mother visited Martin weekly, but the foster mother said that Mother never stayed the full two hours. She regularly stopped the visits half an hour early, saying she had to leave to do something. During visits, Mother played with Martin and talked to him. The social worker stated that Martin had a close relationship with Mother. The foster mother noted that during visits, they had gone to a nearby restaurant so the maternal grandmother could feed Martin. Mother would sit and let the maternal grandmother pay for everything, and did not offer to help pay the bill.

On September 5, 2007, the day of the section 366.26 hearing, Mother filed a section 388 petition to modify the court's prior orders. She requested that Martin be returned to her custody, and that reunification services be reinstated and the section 366.26 hearing date vacated. She also requested that visits be changed to overnight or unmonitored. She stated that she had been having regular weekly visits, and was now in a 52-week parenting program. She expressed remorse for the circumstances leading to dependency court jurisdiction, and accepted responsibility for the child's having been removed from the maternal grandmother. Mother claimed that Martin remained emotionally bonded to her and to his maternal family.

At the hearing on September 5, 2007, the court first addressed the section 388 petition. The court denied the petition, finding as to the request that Martin be placed with Mother that Mother did not state new evidence or a change of circumstances. The circumstances were "changing but not changed," according to the court. The request for reinstatement of reunification services was denied because Mother had received approximately 14 months of reunification services, and had over one year of additional time to complete her programs. It would be premature to return the child to Mother, who was only having two-hour monitored visits and was three months into a one-year program. Finally, Mother had not

addressed the status of her individual counseling sessions. The court noted as to Mother's request in the section 388 petition for overnight or unmonitored visitation that it was granting a hearing on that issue, but that the court would hold the section 366.26 hearing first because the results of that hearing could render moot the visitation issue.

Mother testified that Martin had lived with her for the first 18 months of his life, and then lived with the maternal grandmother for about two years. She had unmonitored visitation for about three or four months during the time Martin lived with the grandmother. She had two or three overnight visits with him in the grandmother's home. At the time of the hearing she had weekly, two hour visits with him, and she had not missed any visits. During visits, she played with and talked to him. She would take him breakfast in the morning, and if he wanted something, he would ask her to bring it to the next visit. He called her "Mama" during visits. He had told her that he did not want to be in his foster home, and asked why everyone else had his mom and dad and he did not. He had said that three days earlier, during a telephone conversation. At the end of visits, sometimes he had tantrums and would not stop crying for long periods of time. Mother testified that, at the time of the hearing, he had been crying more than he had before. He could tell when visits were going to be over, and would start crying. She could sometimes calm him by reminding him she would call him later and would visit again the next week. At the beginning of visits, he was happy and would run to her and hug and kiss her.

Mother stated that she believed the foster mother did not want to adopt him because she really cared for and wanted him, but instead she wanted to adopt him because of the money she would get. Sometimes he did not look well cared for; he had holes in his clothes, dirty hair and ears, and uncut nails. She bought him

clothes because he was her son and she wanted to care for him and have him look decent. She sometimes clipped his nails during visits.

Mother acknowledged that she had made a mistake, which she did not want to admit in the beginning, but she did not think it was fair for Martin to pay for something that was not his fault. She felt he did not deserve to be in foster care.

When Martin lived with his maternal grandmother, Mother stated that she was still his mom, and she did not just let his grandmother take care of him. She would call and visit, and buy what he needed. She played with him, and took him to amusement parks, movies, the park, and out to eat. He was clean and well cared for by the maternal grandmother, so she did not have to do things like clip his nails when she visited him there. If he got dirty, she would bathe him and keep his face and ears clean. She always took him to medical appointments when he lived with her, but she had not done so for the last year, after he began living with the foster mother. She had taken him to the doctor once during an unmonitored visit because his lip was swollen and his stomach was swollen and hurting. She did not feel she was doing anything wrong by doing so, but her unmonitored visits were taken away as a result.

Martin's counsel asked Mother if she ever disciplined him, and she replied that when he lived with the maternal grandmother she had put him in the corner for a few minutes. That occurred about three times. She never hit him or yelled at him. If the foster mother told her Martin had done something wrong, Mother would talk to him and tell him not to do it any more and he would obey; she said he did not listen to anyone else but her. The foster mother would tell Mother the following week that the talk Mother had with Martin had worked, and he was now behaving.

Counsel for DCFS asked Mother if she recalled saying in court on April 26, 2007, that she had no idea where Martin's father was, and Mother said she did

recall saying that. Counsel said she had no further questions. The court inquired what point counsel was making. Counsel responded by pointing out that the record showed that Mother and Father came to a visit at the foster home together in March 2007, and they came to another visit together on May 22, 2007, at DCFS, indicating that Mother was being “less than honest” with the court. Mother’s counsel asked if Mother could return to the stand to address the implication that she continued to be in a relationship with Father, which she denied. The court denied the request, saying that she had had the opportunity to do so during her testimony.

The court found, based on Mother’s testimony, that she did not have a parental role in Martin’s life. She saw him once a week for two hours, and played with and talked to him. She might bring him breakfast or clip his nails. Martin’s asking why he did not have a mom and dad like everyone else simply illustrated that he should be given the opportunity to have a mother “who is raising him as a mom in his life through adoption.” Regarding his crying at the end of visits, the court stated: “As long as we continue in this unstable situation for him of not having permanence, he is continuing to pay for something he didn’t do. It supports why parental rights should be terminated.”

The court found that returning Martin to his parents would be detrimental, found him to be adoptable, and ordered parental rights terminated. DCFS was ordered to immediately proceed with adoptive placement.

This timely appeal followed.

DISCUSSION

I. The Beneficial Parental Relationship Exception to Adoption

It is clear that Mother loves Martin and has established a caring relationship with him despite the fact that he was removed from her custody about when he was

18 months of age. However, we are ultimately bound, in reviewing an order from a section 366.26 hearing, to uphold the court’s conclusion if it is supported by substantial evidence. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576-577.)

“At a hearing under section 366.26, the court is required to select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred permanent plan. (*In re Edward R.* (1993) 12 Cal.App.4th 116, 122; *In re Heather B.* (1992) 9 Cal.App.4th 535, 546.) In order for the court to select and implement adoption as the permanent plan, it must find, by clear and convincing evidence, the minor will likely be adopted if parental rights are terminated. (§ 366.26, subd. (c)(1).) The parent then has the burden to show termination would be detrimental to the minor under one of [five] specified exceptions. (§ 366.26, subd. (c)(1)(A)[- (E)].) In the absence of evidence termination would be detrimental to the minor under one of these exceptions, the court ‘*shall* terminate parental rights’ (§ 366.26, subd. (c)(1), italics added; see also *In re Matthew C.* (1993) 6 Cal.4th 386, 392 [where minor adoptable and none of the [five] statutory exceptions would result in detriment to minor, decision to terminate parental rights will be relatively automatic].)” (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164.)

One of the five exceptions, applicable where the child would benefit from continuing the relationship, is contained in section 366.26, subdivision (c)(1)(A). “Although the kind of parent/child relationship which must exist in order to trigger the application of section 366.26, subdivision (c)(1)(A) is not defined in the statute, it must be sufficiently strong that the child would suffer detriment from its termination.” (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418; accord *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1253.) “In the context of the dependency scheme prescribed by the Legislature, we interpret the “benefit from continuing the

[parent/child] relationship” exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ (*In re Autumn H.*, *supra*, 27 Cal.App.4th 567, 575.)” (*In re Beatrice M.*, *supra*, 29 Cal.App.4th at p. 1418; accord *In re Jamie R.* (2001) 90 Cal.App.4th 766, 773.) The exception referred to in section 366.26, subdivision (c)(1)(A) “‘applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.’” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)” (*In re Beatrice M.*, *supra*, 29 Cal.App.4th at p. 1419.) In evaluating the parent-child relationship, the court may consider the age of the child, the portion of the child’s life spent in the parent’s custody, the positive and negative interaction between the parent and the child, and the child’s particular needs. (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

Here, Martin was removed from Mother when he was about one and one-half years old. He then lived with his maternal grandmother for one year and ten months. He had lived in a foster home for one year at the time of the section 366.26 hearing. He is now five years old. Thus, a considerable portion of his young life has been spent outside of Mother’s care. Her interaction with Martin during visits was positive, and apparently he cried sometimes at the end of visits. However, this evidence does not demonstrate the kind of relationship necessary to avoid termination of parental rights. It is significant that her visits became

progressively more restrictive as the case proceeded, rather than the reverse, and that she frequently ended the monitored visits early. Rather than demonstrating a determination to do everything possible to act in a parental role, her actions showed that she had other concerns that took precedence. Although Mother and Martin undoubtedly have a loving relationship, the court did not abuse its discretion in concluding the relationship was not of the nature required to prevent termination of parental rights. (*In re Clifton B.*, *supra*, 81 Cal.App.4th at p. 424; *In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 576-577.)

II. Failure to Inform the Court of the Child's Wishes

Mother next contends that DCFS and Martin's counsel failed to inform the court of Martin's wishes, as required by section 366.26, subdivision (h)(1).³ She is incorrect.

DCFS reported that in January 2007 and again in April 2007, Martin expressed to his therapist that he was content living in his foster home. The social worker stated in the report dated September 5, 2007, that she spoke with Martin (whose speech had improved dramatically) and he said he would like to remain in his foster mother's home. Martin, not yet five years old, was too young to make a meaningful statement regarding adoption. At the section 366.26 hearing, Martin's counsel did not state anything with regard to Martin's wishes, but indicated he was aligned with the position of DCFS that parental rights should be terminated and Martin should be freed for adoption.

³ Section 366.26, subdivision (h)(1) provides: "At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child."

In addition, Mother testified that Martin said he did not want to be in his foster home, and asked why everyone else had his mom and dad and he did not.

Thus, the court was fully informed regarding Martin's wishes. The record does not contain any indication that the court disregarded any of the information it had received about Martin's wishes. Rather, the court took into account all of the information available to it, including the fact that Martin continued to suffer emotionally because of the instability inherent in being in foster care, and determined that it was in his best interest to terminate parental rights and enable him to enjoy the permanency and stability of adoption. Mother has not demonstrated error.

III. Denial of Due Process

Finally, Mother contends that the juvenile court "truncat[ed]" the section 366.26 hearing and prevented her from presenting rebuttal evidence. We disagree.

A. Time Limits Imposed on Direct Examination

Background

At the outset of Mother's testimony during the section 366.26 hearing, the court inquired of her counsel how much time she needed for direct examination, and counsel replied 15 or 20 minutes. The court said it would give her five minutes, and if she used it expeditiously and needed more, she could have more. Shortly thereafter, the court warned that if counsel kept asking irrelevant questions, she would not get more than five minutes.

Direct examination proceeded, and at one point the court noted that questioning had lasted six minutes, and counsel could have five more minutes. The court later informed Mother's counsel when 15 minutes had elapsed since direct examination began, and invited counsel for Father to cross-examine Mother.

Analysis

Mother contends that “[t]hese arbitrary and vacillating time constraints were impediments to a full and fair hearing.” However, the record does not support this assertion. Rather, the court was merely exercising its inherent power to exercise reasonable control over the proceedings. The only way in which the time constraint changed was that ultimately the court allowed Mother’s counsel to question Mother for the full 15 minutes counsel had requested, after the court had initially indicated the time would be much more limited. The court did not repeatedly interrupt or interfere with counsel’s examination of Mother. Most importantly, on appeal Mother does not identify any testimony she would have presented had she been given the time to do so, nor did she present an offer of proof to that effect at the time of the hearing. This fact is fatal to Mother’s due process argument.

B. Rebuttal Evidence

Background

After counsel for DCFS asked Mother if she remembered testifying in April 2007 that she did not know Father’s whereabouts, counsel clarified pursuant to the court’s request that such testimony went to Mother’s credibility, since Father had accompanied Mother to visits with Martin in March and May 2007. Mother’s counsel asked that Mother be allowed to resume the stand to address the implication that she continued to be in a relationship with Father, which she denied. The court denied counsel’s request. Mother contends this was error.

Analysis

As Mother contends, a parent has the right to due process at a section 366.26 hearing, and to a meaningful opportunity to present evidence. (*In re Thomas R.* (2006) 145 Cal.App.4th 726, 733.) However, “[t]he state’s strong interest in prompt and efficient trials permits the nonarbitrary exclusion of evidence [citation], such as when the presentation of the evidence will “necessitate undue consumption of time.” (Evid.Code, § 352.) The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court.’ (*Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1146-1147.)” (*In re Thomas R., supra*, at p. 733.)

Here, evidence regarding whether Mother continued to be in a relationship with Father simply was not of significant probative value to the issue before the court: the nature of Mother’s relationship with Martin. The record shows that Mother’s relationship with Father was counsel’s intended topic of inquiry with Mother on rebuttal. The more general issue of Mother’s credibility was certainly relevant, but the record demonstrates that the question posed by DCFS’s counsel had little effect on the court’s view of Mother’s credibility. Indeed, the court fully credited Mother’s testimony about her relationship and activities with Martin. The court simply did not find that the relationship she described was such that terminating parental rights would be detrimental to Martin. Mother’s description of Martin’s behavior convinced the court that the child was in need of the permanency and stability that adoption would provide. We find no error in the court’s refusal to allow the rebuttal evidence requested by Mother’s counsel.

DISPOSITION

The order terminating parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.